



C o u n t y o f S a n L u i s O b i s p o

GENERAL SERVICES AGENCY

Janette D. Pell, Director

Helen McCann, Department Administrator

REQUEST FOR PROPOSAL PS-#1170 LOS OSOS HABITAT CONSERVATION PLAN

February 3, 2012

The County of San Luis Obispo (County) is currently soliciting proposals for professional services for the Los Osos Habitat Conservation Plan.

Each proposal shall specify each and every item as set forth in the attached specifications. Any and all exceptions must be clearly stated in the proposal. Failure to set forth any item in the specifications without taking exception may be grounds for rejection. The County reserves the right to reject any and all proposals and to waive any irregularity or informality in any proposal or in the Request for Proposal process, as long as, in the judgment of the County, such action will not negate fair competition and will permit proper comparative evaluation of the proposals submitted.

This Request for Proposal is posted on the County's Purchasing website at http://www.slocounty.ca.gov/GSA/Purchasing/Current_Formal_Bids_and_Proposals.htm. Any changes, additions, or deletions to this Request for Proposal will be in the form of written addenda issued by the County. Any addenda will be posted on the website. Prospective proposers must check the website for addenda or other relevant new information during the response period. The County is not responsible for the failure of any prospective proposer to receive such addenda. All addenda so issued shall become a part of this Request for Proposal.

If your firm is interested and qualified, please submit eight (8) hard copies and one (1) electronic copy (on CD) of your proposal on February 23, 2012 by 3:00 p.m. to:

County of San Luis Obispo
Debbie Belt, GSA Purchasing
1087 Santa Rosa Street
San Luis Obispo, CA 93408

If you have any questions about the proposal process, please contact me. For technical questions and information contact Trevor Keith at (805) 781-1431.

All questions pertaining to the content of this Request for Proposal must be made in writing via e-mail to Debbie Belt at: dbelt@co.slo.ca.us. All questions will receive a response within 3 business days. The question and its response will be posted (anonymously) on the County's Purchasing web site located at the link above. The County reserves the right to determine the appropriateness of comments/questions that will be posted on the website.

DEBBIE BELT

Debbie Belt – GSA Purchasing

dbelt@co.slo.ca.us

LOS OSOS HABITAT CONSERVATION PLAN**LOCAL VENDOR PREFERENCE**

The County has established a local vendor preference. When quality, service, and other relevant factors are equal, responses to Requests for Proposals will be evaluated with a preference for local vendors. Note the following exceptions:

1. Those contracts which State Law or, other law or regulation precludes this local preference.
2. Public works construction projects.

A "local" vendor preference will be approved as such when, 1) The vendor conducts business in a fully staffed office with a physical address within the County of San Luis Obispo; 2) The vendor holds a valid business license issued by the County or a city within the County; and 3) The vendor has conducted business at the local address for not less than six (6) months prior to the due date of this Request for Proposal..

Proposals received in response to this Request for Proposal will be evaluated by the Selection Committee considering the local vendor preference described above when quality, service and other relevant factors are equal. The burden of proof will lie with proposers relative to verification of "local" vendor preference. Should any questions arise, please contact a buyer at (805) 781-5200.

	YES	NO
Do you claim local vendor preference?		
Do you conduct business in an office with a physical location within the County of San Luis Obispo?		
Business Address: _____ _____		
Years at this Address: _____		
Does your business hold a valid business license issued by the County or a City within the County?		
Name of Local Agency which issued license: _____		

Business Name: _____

Authorized Individual: _____ Title: _____

Signature: _____ Dated: _____

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1. All proposals, consisting of eight (8) hard copies and one (1) electronic copy (on CD) must be received by mail, recognized carrier, or hand delivered no later than 3:00 p.m. on February 23, 2012. Late proposals will not be considered and will be returned, unopened.
2. All correspondence should be directed to:

San Luis Obispo County
General Services Agency
1087 Santa Rosa Street
San Luis Obispo, CA 93408
ATTENTION: DEBBIE BELT
Telephone: (805) 781-5903

3. All costs incurred in the preparation and submission of proposals and related documentation will be borne by the proposer.
4. It is preferred that all proposals be submitted on recycled paper, printed on two sides.
5. Selection of qualified proposers will be by an impartial Selection Committee using an approved County procedure for awarding professional contracts. Selection will be made on the basis of the proposals as submitted, although the County reserves the right to interview applicants as part of the selection process. The proceedings of the Selection Committee are confidential, and members of the Selection Committee are not to be contacted by the proposers.
6. This Request for Proposal does not constitute an offer of employment or to contract for services.
7. The County reserves the option to accept or reject any or all proposals, wholly or in part, received by reason of this request, and make more than one award, or no award, as the best interests of the County may appear.
8. All documents submitted to the County in response to this Request for Proposal will become the exclusive property of the County and may be returned to the proposer or kept by the County, in the County's sole discretion.
9. All proposals shall remain firm for sixty, (60) days following closing date for receipt of proposals.
10. The County reserves the right to award the contract to the firm who presents the proposal which in the judgment of the County, best accomplishes the desired results, and shall include, but not be limited to, a consideration of the professional service fee.
11. Any contract awarded pursuant to this Request for Proposal will incorporate the requirements and specifications contained in this Request for Proposal. All information presented in a proposer's proposal will be considered binding upon selection of the successful proposer, unless otherwise modified and agreed to by the County during subsequent negotiations.
12. The successful proposer is expected to execute a contract similar to the contract in Appendix A. This sample contract is for reference to the anticipated terms and conditions governing the County and the successful proposer. The proposer must take exception in their proposal to any section of the attached contract they do not agree with. Failing to do so will be deemed as acceptance by the proposer to the terms spelled out in the sample contract. The County reserves the right, in its sole discretion, to add, delete, or modify, or negotiate additional terms and

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conditions to the attached contract. BEFORE BEGINNING ANY WORK OR SUBMITTING A PROPOSAL IT IS ADVISED THAT PROPOSERS READ THE COUNTY INSURANCE AND INDEMNIFICATION REQUIREMENTS IN THE ATTACHED SAMPLE CONTRACT. The selected proposer will be asked to provide evidence that County insurance requirements have been met. See Appendix A – Sample County Contract, and in the Sample County Contract the insurance requirements are found in Exhibit A.

13. Under the provisions of the California Public Records Act (the “Act”), Government Code section 6252 et seq., all “public records” (as defined in the Act) of a local agency, such as the County, must be available for inspection and copying upon the request of any person. Under the Act, the County may be obligated to provide a copy of any and all responses to this Request for Proposal, if such requests are made after the contract is awarded. One exception to this required disclosure is information which fits within the definition of a confidential trade secret [Government Code section 6254(k)] or contains other technical, financial or other data whose public disclosure could cause injury to the proposer’s competitive position. If any proposer believes that information contained in its response to this Request for Proposal should be protected from disclosure, the proposer MUST specifically identify the pages of the response that contains the information by properly marking the applicable pages and inserting the following notice in the front of its response:

NOTICE: The data on pages _ of this response identified by an asterisk (*) contain technical or financial information, which are trade secrets, or information for which disclosure would result in substantial injury to the proposer’s competitive position. Proposer requests that such data be used only for the evaluation of the response, but understands that the disclosure will be limited to the extent the County considers proper under the law. If an agreement is entered into with the proposer, the County shall have the right to use or disclose the data as provided in the agreement, unless otherwise obligated by law.

The County will not honor any attempt by proposer to designate its entire proposal as proprietary. If there is any dispute, lawsuit, claim or demand as to whether information within the response to the Request for Proposal is protected from disclosure under the Act, proposer shall indemnify, defend, and hold harmless, the County arising out of such dispute, lawsuit, claim or demand.

14. An electronic copy of your proposal must be included. This electronic copy should include all documents being submitted combined into one Adobe Acrobat (pdf) file on a CD, using this convention for the file name: FIRM NAME + RFP NUMBER (e.g., if your firm is Acme Inc. and you are responding to RFP #1101, your Acrobat (pdf) file would be named: **ACME 101.pdf**)

Additionally, if you deem any part of your proposal as proprietary and not to be disclosed under the California Public Records Act as explained in item 13 above, please mark the CD with the phrase “**Proprietary Information Included**”. This can be hand written or printed on the CD label.

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PROPOSAL FORMAT

A qualifying proposal must address all of the following points and shall be in the format outlined in this section:

1. Project Title
2. Applicant or Firm Name
3. Firm Qualifications
 - a. Type of organization, size, professional registration and affiliations.
 - b. Names and qualifications of personnel to be assigned to this project.
 - c. Outline of recent projects completed that are directly related to this project. Consultant is required to demonstrate specific design and project expertise relating to the requirements of the Project Scope.
 - d. Qualifications of consultants, subcontractors, or joint venture firm, if appropriate.
 - e. Client references from recent related projects, including name, address and phone number of individual to contact for referral.
4. Understanding of and Approach to the Project
 - a. Summary of approach to be taken.
 - b. Description of the organization and staffing to be used for the project.
 - c. Indication of information and participation the proposer will require from County staff.
 - d. Indication of time frame necessary to complete the plan review once a Notice to Proceed is issued.
5. Fees and Insurance
 - a. Propose total fixed fees to complete project as described under Project Scope.
 - b. Insurance and indemnification requirements are described in Attachment A: Sample Contract for Special Services by Independent Contractor.

LOS OSOS HABITAT CONSERVATION PLAN**PROJECT SCOPE****General Requirements**

The Habitat Conservation Plan for the community of Los Osos must meet all of the requirements set forth in the California Endangered Species Act (CESA), California Fish and Game Code section 2050 et seq, and section 10(a)(2)(A) of the Federal Endangered Species Act (ESA), and the California Coastal Act. In addition to these laws, the project process and plan must meet and be consistent with other applicable Federal, state, and local policies and regulations, existing local programs, and meet the goals of the County that may not be explicitly stated in Federal or State of California regulations.

Specific Requirements

Work on the LOHCP will be a collaborative effort between the consultant, the County, Service, CDFG and the California Coastal Commission (CCC) to meet the objectives of this project. The implementation of the LOHCP is dependent upon the issuance of and compliance with, various State of California and Federal permits and programs. The development of the Draft LOHCP is guided by the requirements of those State of California and Federal agencies that will issue those permits and/or confirm project compliance. The process of permitting and/or confirming compliance with State of California and Federal requirements is often complex requiring special knowledge of State of California and Federal wildlife/habitat laws and regulations, and experience with state of California and Federal wildlife agencies. As needed, the consultant will be available to provide guidance in coordinating with State of California and Federal agencies and provide general experience and expertise, options, and substantial direction in work program implementation.

The following is a general conceptual outline and description of anticipated tasks, responsibilities, and expectations. It is requested that proposals provide sufficient information to evaluate the ability of consultant to complete these items, leading to the completion and approval of the HCP and the issuance of incidental take permits. If consultants expect additional items will be essential to completion of this project, it is requested that they be included in the proposal.

The County strongly recommends that the consultant to review the February 2005 Administrative Draft of the Los Osos Habitat Conservation Plan and incorporate in their proposal how they can use the existing information and what new work would be needed. The County would like to use the previous work that has been done when they can. The County would like to rely on the information contained in the administrative draft to the extent possible.

The following shall be addressed in the LOHCP Proposal:

Project Administration

Project Management - How your firm will meet the deliverables in a timely manner and keep the project moving forward.

Meetings – Assume that meeting attendance as necessary will be required throughout the preparation of the plan. These meetings will include County staff and the Wildlife Agencies. It is requested that proposals describe who will attend (or in their absence attend if there are schedule or staffing conflicts) the anticipated meetings.

Coordination

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CEQA/NEPA Documentation – Provide technical support, assistance, and necessary deliverables as requested to the consultant completing CEQA and NEPA documentation. Coordinate with the consultant completing CEQA and NEPA documentation.

Deliverables

The format for all text documents, tables, charts, and illustrations shall be 8 1/2 x 11 vertical. If oversize inclusions are necessary, they will be 11 x 17. Document covers for all related documents shall be coordinated so they appear as a "set." All documents shall be two sided, black ink, on white or light recycled stock paper. Each subtask under the Habitat Conservation Plan should be viewed as a deliverable. When a work product is delivered, assume a total of five (5) copies will need to be made and delivered to the County, Service, and DFG. In addition, you will need to take into account revisions to the work product.

Habitat Conservation Plan Tasks**Task 1. Revise the Project Description, Covered Activities & Species and Take Assessment**

The consultant will prepare the project description, including covered activities that will require take authorization, species for which coverage will be extended in permits and an assessment of take which will occur with covered activities, for review by the wildlife agencies. The project description will subsequently be used for the environmental review process.

Task 2. Incorporate Comments on the Draft HCP from CCC & USFWS

The consultant will conclude review of previous administrative draft Los Osos Community-wide Habitat Conservation Plan (LOHCP) (February 2005); the United States Fish and Wildlife (USFWS) comments on the Administrative Draft LOHCP (November 29, 2005); and any additional comments and existing conditions information to determine what has changed since the administrative draft was prepared.

Task 3. Revise the HCP Conservation Strategy and Associated Mitigation Process

The consultant will develop a conservation strategy which will include a combination of on-site avoidance and minimization measures; and off-site mitigation, which would include preservation and management of habitat lands in perpetuity. The conservation strategy must meet both federal and state standards for permit issuance.

Task 4. Revise the Plan Implementation, Cost Estimates and Funding Sections

The consultant will revise the plan implementation section to describe the administrative structure proposed for implementation; and develop cost estimates and a funding plan to fully support implementation of the updated Los Osos Community-wide Habitat Conservation Plan (LOHCP).

Task 5. Prepare a Cultural Resources Report

The consultant will prepare the cultural resources report regarding the LOHCP area.

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Task 6. Complete the Draft Implementing Agreement to Define the Funding Structure and Responsibilities of Participants

The consultant will work with all participating agencies to develop the Implementing Agreement, which would identify the responsible parties for full implementation of the plan, how implementation will be funded, and other details to clarify roles and responsibilities of participating entities.

Task 7. Finalize an Administrative Draft HCP, Draft Implementing Agreement, and Cultural Resources Report; and coordinate with the CCC regarding changes to the Local Coastal Plan

The consultant will finalize the HCP, implementing agreement, and cultural resources report; and coordinate with the CCC regarding needed revisions to the Local Coastal Plan to streamline implementation of the HCP.

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**ATTACHMENT A
SAMPLE CONTRACT FOR SPECIAL SERVICES BY
INDEPENDENT CONTRACTOR**

THIS CONTRACT is entered into this ____ **day of** ____, ____, by and between the COUNTY OF SAN LUIS OBISPO (hereinafter referred to as "County") and _____ an independent contractor (hereinafter referred to as "Consultant").

W I T N E S S E T H

WHEREAS, the County of San Luis Obispo has a need for special services in developing a _____. The Consultant will be responsible for developing a plan that meets all of the requirements set forth in the California Endangered Species Act (CESA), California Fish and Game Code Section 2050 et seq, Section 10(a)(2)(A) of the federal Endangered Species Act (ESA), the California Coastal Act, and all other applicable federal, state, and local policies, regulations and programs; and

WHEREAS, Consultant is specially trained, experienced, expert and competent to perform such special services;

NOW THEREFORE, the parties mutually agree as follows:

I. PREPARING THE LOS OSOS HABITAT CONSERVATION PLAN (LOHCP)

A. DUTIES OF THE CONSULTANT.

1. The Consultant shall submit the following documents in multiple copies in phases as described below: _____. Consultant agrees to prepare the documents in compliance with the scope of work as described in **Exhibit 1** (attached).

a. The Administrative Draft Habitat Conservation Plan (HCP). The administrative draft HCP is an internal agency document and shall be transmitted only to the County, who then may provide it to agencies as needed. Consultant shall not release any part of the administrative draft HCP to the public or any other agencies without advance direction from the County. Consultant shall submit six (6) unbound copies (3-hole drilled) in 3-ring binders, and one CD (in Word) of an administrative draft HCP to the County for agency and staff review and comment. The County submits comments to the Consultant. Consultant shall incorporate all of the comments and shall submit all changed or new pages showing the revisions to the County. The administrative draft HCP may be submitted and returned for changes as often as necessary until the County approves a copy as a complete administrative draft HCP. When the County notifies Consultant that the County has approved the administrative draft HCP, this phase is complete.

b. The Administrative Draft Implementing Agreement (IA). The administrative draft IA is an internal agency document and shall be transmitted only to the County, who then may provide it to

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agencies as needed. Consultant shall not release any part of the administrative draft IA to the public or any other agencies without advance direction from the County. Consultant shall submit six (6) unbound copies and one CD (in Word) of an administrative draft IA to the County for agency and staff review and comment. The County submits comments to the Consultant. Consultant shall incorporate all of the comments and shall submit all changed or new pages showing the revisions to the County. The administrative draft IA may be submitted and returned for changes as often as necessary until the County approves a copy as a complete administrative draft IA. When the County notifies Consultant that the County has approved the administrative draft IA, this phase is complete.

c. The Public Review Draft HCP and Notice of Availability (NOA). The Consultant shall provide the Public Review Draft HCP and Notice of Availability (NOA), ready for public review. The Consultant shall provide the County with seven (7) copies of the Public Review Draft HCP as follows: six (6) unbound copies (3-hole drilled) in three ring binders, and one (1) electronic copy in original format (in Word). Also, the Public Review Draft HCP and Notice of Availability using an HTML, PDF, or other similar format, shall be divided into chapters so text and graphics can be easily used/placed on the County's web site for quick downloads. The County must approve the Public Review Draft HCP and Notice of Availability for this phase to be complete.

d. The Administrative Final HCP and Implementing Agreement (IA). After the comments have been collected by the County, the County shall transmit these comments to the Consultant. The Consultant shall respond to these comments and incorporate any changes into the final document. Within thirty (30) calendar days of receipt of these comments, the Consultant shall provide the County with six (6) unbound copies (3-hole drilled) in 3-ring binders, and one (1) CD (in Word) of the Administrative Final HCP and Implementing Agreement for the County's review, comment and approval. The County will submit comments to the Consultant. Consultant shall incorporate all of the County's comments and shall submit all changed or new pages showing the revisions to the County. The Administrative Final HCP and Implementing Agreement may be submitted and returned for changes as often as necessary until the County approves a copy as a complete Administrative Final HCP and Implementing Agreement. When the County notifies Consultant that the County has approved the Administrative Final HCP and Implementing Agreement, this phase is complete.

e. The Final HCP and Implementing Agreement (IA). After the County approves the Administrative Final HCP and Implementing Agreement, the Consultant shall provide the County with six (6) copies of the Final HCP and Implementing Agreement as follows: six (6) hard copies in three ring binders; and one (1) CD in original software format (e.g., Word, Excel, etc.) Textual information shall be in Word format (as directed by County); spreadsheets and/or databases shall be in Excel format or other format acceptable to County. Computer spreadsheets and graphics generated for use in the HCP shall be formatted for easy use as part of the County's ArcInfo-based geographic information system as follows:

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Whenever possible, digitized map data shall be based upon the USGS 7.5 minute quad sheet map series (1:24,000). For registration purposes the locations of the eight (8) latitude/longitude coordinate grid points that represent the four corners and four interior points of the quad map shall be identified. Each distinct data set shall be mapped to a separate layer or theme. All final map data shall be registered to the California State Plane coordinate grid system (NAD83), units being in U.S. feet, and shall be submitted in a .DWG and/or .SHP file format compatible with AutoCAD 2000, ArcView 3.x, or ArcGIS 8.x on CD or DVD media.

A detailed description of all symbolization utilized in the final product shall be included on CD or DVD media. Metadata which meets or exceeds FGDC standards shall also be included on CD or DVD media for all distinct data sets created under this contract.

When the County notifies Consultant that County has approved the Final HCP and Implementing Agreement (IA), this phase is complete.

B. DUTIES OF THE COUNTY.

1. The County will be responsible for ensuring that the HCP and Implementing Agreement meets all the requirements set forth in the California Endangered Species Act (CESA), California Fish and Game Code Section 2050 et seq., Section 10(a)(2)(A) of the federal Endangered Species Act (ESA), and the California Coastal Act.

2. The County will make any documents, relevant to the proposed project, in the possession of County, available to the Consultant.

3. It is understood that repeated revisions to the HCP are costly for the Consultant and the County. Therefore the County shall make every effort to reduce the number of iterations of the HCP to a minimum by diligently reviewing each submittal by the Consultant.

4. County will advise the Consultant whether to continue with the HCP or stop work when situations are identified, such as environmental, economic, technical, legal or other factors, which could inhibit or prohibit the project.

5. Other agencies and the public may make comments to the draft HCP. The County will make any of these comments that raise environmental points available to the Consultant.

6. The County will provide for payment to the Consultant as provided by the terms of this Contract. The County will expeditiously review all work submitted by the Consultant in order to assure prompt payment of invoices. At the request of the Consultant, the County will explain in writing any delay, not the result of the Consultant that would prevent payment of the invoice within 60 days of receipt by the County.

C. PAYMENT.

1. County's Maximum Cost of the HCP and Implementing Agreement (IA). The Contract for the preparation of the contract is lump sum. It is not a time and materials Contract. The County will

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pay the Consultant a maximum amount of _____ for a County-approved, Final HCP and IA. The County will pay Consultant in staged payments throughout the performance of the Contract. The sums due under the timing of these staged payments are tied to products delivered by the Consultant to the County, and approval of such products by the County.

2. Time of payment. At the request of the County, the Consultant shall submit itemized statements for work performed on each phase or from the execution of the Contract to the date of the request. The County has the right to access and copy the records to verify all work performed on the Contract to date. The County's right to inspect and copy records is in addition to the legal rights and liabilities of the parties pursuant to an audit described in paragraph III.M of the Primary Contract.

a. Consultant will be paid the maximum amount in paragraph I.A.1.a. above, _____, within sixty (60) days after the County receives a correct invoice, and receives and approves seven (7) copies of the Administrative Draft Habitat Conservation Plan (HCP). If the Contract is terminated before the Consultant expends _____, the County is entitled to a refund of the difference between the itemized billing amount for the work to termination date based on the rates and schedules in Exhibit 1.

b. Consultant will be paid the maximum amount in paragraph I.A.1.b. above, _____, within sixty (60) days after the County receives a correct invoice, and receives and approves seven (7) copies of the Administrative Draft Implementing Agreement (IA). If the Contract is terminated before the Consultant expends _____, the County is entitled to a refund of the difference between the itemized billing amount for the work to termination date based on the rates and schedules in Exhibit 1.

c. Consultant will be paid the maximum amount in paragraph I.A.1.c. above, _____, within sixty (60) days after the County receives a correct invoice, and receives and approves seven (7) copies of the Public Review Draft HCP and Notice of Availability (NOA). If the Contract is terminated before the Consultant expends _____, the County is entitled to a refund of the difference between the itemized billing amount for the work to termination date based on the rates and schedules in Exhibit 1.

d. Consultant will be paid the maximum amount in paragraph I.A.1.d. above, _____, within sixty (60) days after the County receives a correct invoice, and receives and approves seven (7) copies of the Administrative Final HCP and Implementing Agreement (IA). If the Contract is terminated before the _____, the County is entitled to a refund of the difference between the itemized billing amount for the work to termination date based on the rates and schedules in Exhibit 1.

e. Consultant will be paid the maximum amount in paragraph I.A.1.e. above, _____, within sixty (60) days after the County receives a correct invoice, and receives and approves seven (7) copies of the Final HCP and Implementing Agreement (IA). If the Contract is

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terminated before the Consultant expends _____, the County is entitled to a refund of the difference between the itemized billing amount for the work to termination date based on the rates and schedules in Exhibit 1.

3. Early Termination Payment. If the Contract is terminated prior to the completion of the final HCP for a reason other than breach by the Consultant, the County will pay Consultant for work performed on the Contract from execution to termination, but not to exceed the maximum amount listed below for each approved phase plus an additional for work performed and expenses incurred on the phase in progress. Subconsultants shall be apportioned to the phase(s) according to the actual billing to the Consultant from the Subconsultant. Payment for attendance at meetings and hearings, travel and per diem shall be allocated to the phase in which the travel occurred. If any phase is not completed and the Contract is terminated due to breach by the Consultant, the amount due Consultant shall be the maximum amount of the HCP less the amount required to hire and compensate a replacement Consultant to complete the HCP.

4. Cost Containment. In no event is the Consultant authorized to incur additional costs beyond the maximum amounts in this Contract without prior written agreement signed by the County. Before incurring additional costs or providing additional services, Consultant must inform Coordinator, in writing, of the estimated additional costs. Without prior written approval signed by the County, the County shall not be liable for any amount over the amounts specified herein.

5. Early Payment. For good cause, and in the sole discretion of the County, the County may make such early payments during any phase without terminating this Contract. The Consultant shall preserve the work performed to date and minimize the need to repeat work on the current phase. Before receiving an early payment, the Consultant shall submit an itemized statement showing time and materials spent from execution to date, specifically identifying the work done on the phase in progress and the estimated amounts remaining to complete the phase in progress. In no event shall Consultant be entitled early payment for a future phase. The Board of Supervisors delegates the authority to make early payments to the Environmental Coordinator provided the Environmental Coordinator retains sufficient funds to complete the phase in progress including costs to re-start a delayed phase. The County shall incur no liability for declining to make an early payment.

II. SCOPING MEETINGS, COMMITTEE MEETINGS, COORDINATION MEETINGS, DOCUMENT REVIEW, PROJECT MANAGEMENT, AND PUBLIC HEARINGS

This section of the Contract, Section II, is an option to be exercised solely at the discretion of the County.

A. NUMBER OF MEETINGS AND PUBLIC HEARINGS.

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At the County's written request, Consultant will send appropriate representatives to _____ scoping meeting and _____ general public meetings, _____ team meetings, and _____ public hearings.

B. PAYMENT CALCULATIONS.

Payments made prior to satisfactory completion of all work required by Section II shall not exceed, in the aggregate, ninety percent (90%) of the total earned for Section II work with the balance to be paid upon satisfactory completion of the Section II work, and provided further, that the County shall retain for each period for which payment is made, an amount equal to ten percent (10%) of such earnings, pending satisfactory completion of the Section II work.

1. Attendance at scoping meetings, team meetings, independent science advisory committee meetings, document review, project management, and general public meetings. The Consultant shall be paid for the time spent by Consultant's representatives in preparing for and attending the project scoping meeting. The Consultant shall submit an itemized billing for each meeting attended. For preparation and attendance at such meetings, Consultant's staff will be paid at the following hourly rates: _____. The total maximum for preparation, attendance and participation of all of Consultant's representatives in all meetings on the project including document review and project management, is _____.

2. Attendance at public hearings. The Consultant shall be paid for the time spent by Consultant's representatives in preparing for and attending the public hearing(s). The Consultant shall submit an itemized billing for each public hearing attended. For preparation and attendance at such meetings, Consultant's staff will be paid at the following hourly rates: _____. The total maximum for preparation, attendance and participation of all of Consultant's representatives in all public hearings on the project and appeal, if any, is _____.

III. GENERAL CONDITIONS**A. INDEPENDENT CONTRACTOR.**

Consultant shall be deemed to be an independent contractor of County. Nothing in this Contract shall be construed as creating an employer-employee relationship, partnership or a joint venture relationship. Nothing in this Contract authorizes, or permits, the County to exercise discretion or control over the professional manner in which Consultant performs the services which are the subject of this contract; provided always, however, that the services to be provided by Consultant shall be provided in a manner consistent with all applicable standards and regulations governing such services.

B. NO ELIGIBILITY FOR FRINGE BENEFITS.

Consultant understands and agrees that its personnel are not, and will not be, eligible for membership in or any benefits from any County group plan for hospital, surgical, or medical

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insurance, or for membership in any County retirement program, or for paid vacation, paid sick leave, or other leave, with or without pay, or for any other benefit which accrues to a County employee.

C. INDEMNIFICATION.

(1) Except as provided in paragraph (2) below, Consultant shall defend, indemnify and save harmless the County of San Luis Obispo, its officers, agents and employees, from any and all claims, demands, damages, costs, expenses, judgments or liability arising out of this Contract or attempted performance of the provisions hereof, including but not limited to those predicated upon theories of violation of statute, ordinance, or regulation, professional malpractice, negligence, or recklessness including negligent or reckless operation of motor vehicles or other equipment, furnishing of defective or dangerous products or completed operations, premises liability arising from trespass or inverse condemnation, violation of civil rights and also including any adverse determination made by the Internal Revenue Service or the State Franchise Tax Board with respect to Consultant's "independent contractor" status that would establish a liability for failure to make social security and income tax withholding payments, failure to comply with workers' compensation laws, or any act or omission to act, whether or not it be willful, intentional or actively or passively negligent on the part of Consultant or his agents, employees or other independent Consultants directly responsible to Consultant; providing further that the foregoing shall apply to any wrongful acts or any active or passively negligent acts or omissions to act, committed jointly or concurrently by Consultant or Consultant's agents, employees or other independent contractors and the County, its agents, employees or independent contractors. Nothing contained in the foregoing indemnity provision shall be construed to require indemnification for claims, demand, damages, costs, expenses or judgments resulting solely from the conduct of the County.

(2) If any claim, demand, litigation or other challenge to the County is brought alleging a deficiency with the County's compliance under the California Endangered Species Act (CESA), California Fish and Game Code Section 2050 et seq, Section 10(a)(2)(A) of the federal Endangered Species Act (ESA), the California Coastal Act, or any other applicable federal, state, and local policies, regulations and programs, the County shall provide the initial legal response to such challenge and shall give the Consultant notice of the challenge within 10 business days of the County's receipt of the challenge. If the case moves to litigation, the County shall provide the attorneys to defend the action. However, the Consultant shall assist in the defense by providing any and all documents, personnel who worked on the project, including sub-consultants, and any other in-house expertise that can assist the County in preparing for and presenting the defense to the California Endangered Species Act (CESA), California Fish and Game Code, or federal Endangered Species Act (ESA) challenge. Such assistance shall be at no cost to the County, and shall continue until the legal challenge is finally resolved. If the documents need to be upgraded or modified, the Consultant shall accomplish the same at no cost to the County, unless the Consultant has advised the

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County in writing of the need to upgrade or modify the study or documents and the County has declined to follow the advice of the Consultant. If the County, Consultant or anyone in Consultant's chain of contractual privity is found to be liable for the claim, demand, challenge or litigation, including attorney's fees, the Consultant shall reimburse the County in accordance with the percentage of fault attributed to the Consultant. The reimbursement to the County shall include a reimbursement for the County's attorney's fees and costs of defending the suit apportioned by the same percentage of fault. If the percentage of fault is not included in a judgment, the percentage of fault shall be determined by agreement between the County and the Consultant or arbitration. Arbitration shall be in accordance with the California Code of Civil Procedure, section 1280 et seq.

D. INSURANCE.

Consultant, at its sole cost and expense, shall purchase and maintain the insurance policies set forth below on all of its operations under this Agreement. Such policies shall be maintained for the full term of this Agreement and the related warranty period (if applicable) and shall provide products/completed operations coverage for four (4) years following completion of Consultant's work under this Agreement and acceptance by the County. Any failure to comply with reporting provisions(s) of the policies referred to above shall not affect coverage provided to the County, its officers, employees, volunteers and agents. For purposes of the insurance policies required hereunder, the term "County" shall include officers, employees, volunteers and agents of the County of San Luis Obispo, California, individually or collectively.

1. Minimum Scope And Limits of Required Insurance Policies. The following policies shall be maintained with insurers authorized to do business in the State of California and shall be issued under forms of policies satisfactory to the County:

a. COMMERCIAL GENERAL LIABILITY INSURANCE POLICY ("CGL") Policy shall include coverage at least as broad as set forth in Insurance Services Office (herein "ISO") Commercial General Liability coverage. (Occurrence Form CG 0001) with policy limits not less than the following:

\$1,000,000 each occurrence (combined single limit);

\$1,000,000 for personal injury liability;

\$1,000,000 aggregate for products-completed operations; and,

\$1,000,000 general aggregate.

The general aggregate limits shall apply separately to Consultant's work under this Agreement.

b. BUSINESS AUTOMOBILE LIABILITY POLICY ("BAL"). Policy shall include coverage at least as broad as set forth in Insurance Services Office Business Automobile Liability Coverage, Code 1 "Any Auto" (Form CA 0001). This policy shall include a minimum combined single limit of not less than One-million dollars (\$1,000,000) for each accident, for bodily injury and/or property damage.

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Such policy shall be applicable to vehicles used in pursuit of any of the activities associated with this Agreement. Consultant shall not provide a Comprehensive Automobile Liability policy that specifically lists scheduled vehicles without the express written consent of County.

c. WORKERS' COMPENSATION AND EMPLOYERS' LIABILITY INSURANCE POLICY ("WC/EL"). This policy shall include at least the following coverages and policy limits:

1. Workers' Compensation insurance as required by the laws of the laws of the State of California; and

2. Employer's Liability Insurance Coverage B with coverage amount not less than one million (\$1,000,000) dollars each accident/Bodily Injury (herein "BI"); one million (\$1,000,000) dollars policy limit BI by disease; and, one million (\$1,000,000) dollars each employee BI by disease.

d. PROFESSIONAL LIABILITY INSURANCE POLICY ("PL"). This policy shall cover damages, liabilities, and costs incurred as a result of Consultant's professional errors and omissions or malpractice. This policy shall include a coverage limit of at least One Million Dollars (\$1,000,000) per claim, including the annual aggregate for all claims (such coverage shall apply during the performance of the services under this Agreement and for two (2) years thereafter with respect to incidents which occur during the performance of this Agreement). Consultant shall notify the County if any annual aggregate is eroded by more than seventy-five percent (75%) in any given year.

2. DEDUCTIBLES AND SELF-INSURANCE RETENTIONS. Any deductibles and/or self-insured retentions which apply to any of the insurance policies referred to above shall be declared in writing by Consultant and approved by the County before work is begun pursuant to this Agreement. At the option of the County, Consultant shall either reduce or eliminate such deductibles or self-insured retentions as respect the County, its officers, employees, volunteers and agents, or shall provide a financial guarantee satisfactory to the County guaranteeing payment of losses and related investigations, claim administration, and/or defense expenses.

3. ENDORSEMENTS. All of the following clauses and endorsements, or similar provisions, are required to be made a part of insurance policies indicated in parentheses below:

a. A "Cross Liability", "Severability of Interest" or "Separation of Insureds" clause (CGL & BAL);

b. The County of San Luis Obispo, its officers, employees, volunteers and agents are hereby added as additional insureds with respect to all liabilities arising out of Consultant's performance of work under this Agreement (CGL & BAL);

c. If the insurance policy covers an "accident" basis, it must be changed to "occurrence" (CGL & BAL).

d. This policy shall be considered primary insurance with respect to any other valid and collectible insurance County may possess, including any self-insured retention County may have, and

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any other insurance County does possess shall be considered excess insurance only and shall not be called upon to contribute to this insurance (CGL, BAL & PL);

e. No cancellation or non-renewal of this policy, or reduction of coverage afforded under the policy, shall be effective until written notice has been given at least thirty (30) days prior to the effective date of such reduction or cancellation to County at the address set forth below (CGL, BAL, WC/EL & PL);

f. Consultant and its insurers shall agree to waive all rights of subrogation against the County, its officers, employees, volunteers and agents for any loss arising under this Agreement (CGL); and

g. Deductibles and self-insured retentions must be declared (All Policies).

4. **ABSENCE OF INSURANCE COVERAGE.** County may direct Consultant to immediately cease all activities with respect to this Agreement if it determines that Consultant fails to carry, in full force and affect, all insurance policies with coverages at or above the limits specified in this Agreement. Any delays or expense caused due to stopping of work and change of insurance shall be considered Consultant's delay and expense. At the County's discretion, under conditions of lapse, the County may purchase appropriate insurance and charge all costs related to such policy to Consultant.

5. **PROOF OF INSURANCE COVERAGE AND COVERAGE VERIFICATION.** Prior to commencement of work under this Agreement, and annually thereafter for the term of this Agreement, Consultant, or each of Consultant's insurance brokers or companies, shall provide County a current copy of a Certificate of Insurance, on an Accord or similar form, which includes complete policy coverage verification, as evidence of the stipulated coverages. All of the insurance companies providing insurance for Consultant shall have, and provide evidence of, a Best Rating Service rate of A VI or above. The Certificate of Insurance and coverage verification and all other notices related to cancellation or non-renewal shall be mailed to:

Department of Planning and Building, Environmental Division
976 Osos Street, Room 300
San Luis Obispo, CA 93408

E. WARRANTY OF CONSULTANT.

Consultant, its officers and employees, and subcontractors will comply with all applicable federal or state laws while performing this Contract. Consultant warrants that it, and each of the personnel employed or otherwise retained by Consultant, will at all times be properly certified and licensed under the laws and regulations of the State of California to provide the special services herein agreed to. Consultant warrants that the persons performing the services for this Contract are specially trained, experienced, expert and competent to perform such special services of preparing the required HCP. Consultant warrants that the Consultant, its subcontractors and real person

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working on this Contract have no conflict of interest with this project and will produce an independent, objective and unbiased work product.

F. NON-ASSIGNMENT OF CONTRACT.

Inasmuch as this Contract is intended to secure the specialized services of the Consultant, Consultant shall not delegate its obligations under this Contract and shall not assign or otherwise transfer its rights under this Contract or any interest therein without the prior written consent of County. Any such assignment, transfer, delegation, or subletting without the County's prior written consent shall be null and void.

G. NONDISCRIMINATION.

Consultant will not discriminate, in any manner forbidden by law, against any person employed to perform services under this Contract.

H. TERMINATION OF CONTRACT FOR CAUSE.

1. If any of the following occur, County shall have the right to terminate this Contract effective immediately upon giving written notice to the Consultant:

- a. Consultant fails to perform its duties to the satisfaction of the County;
- b. Consultant fails to fulfill in a timely and professional manner its obligations under this Contract; or
- c. Consultant, or its agents or employees, fail to exercise good behavior either during or outside of working hours that is of such a nature as to bring discredit upon the County; provided however, that in all instances the Coordinator has contacted the Consultant, stating specific reasons for the dissatisfaction of the Coordinator with the performance of the Consultant, and the Consultant has had a reasonable time to respond to the Coordinator's concerns and, if any defect in performance of the Consultant exists, a reasonable time to cure such defect and has unreasonably failed to cure such identified defect.

2. The Consultant may terminate this Contract for cause if the following conditions occur:

- a. If a representative of the Environmental Division has unreasonably failed to perform the Coordinator's duties under this Contract in a timely and professional manner, causing unreasonable delay within the control of the Coordinator; and
- b. The Consultant has contacted the Environmental Coordinator, (the Division Head of the Environmental Division) personally, stating specific reasons for the dissatisfaction of the Consultant with the performance of the representative of the Environmental Division; and
- c. The Environmental Coordinator has had a reasonable time to respond to the Consultant's concerns and if any defect in performance of the Coordinator exists, a reasonable time to cure such defect and has unreasonably failed to cure such identified defect; and

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d. The Consultant has given written notice of the Consultant's outstanding complaints pertaining to specific defects of the Coordinator's performance under this Contract to the Environmental Coordinator; and

e. The Consultant has given written notice of the Consultant's outstanding complaints pertaining to specific defects of the Coordinator's performance under this Contract to the Board of Supervisors of the County of San Luis Obispo, and if after a reasonable time, the Board of Supervisors fails to cure the outstanding defect, then the Consultant may terminate this Contract for cause.

The Board of Supervisors has a right to cure such defect in performance within a reasonable time by causing performance or by giving written notice to Consultant of an intention to perform within a reasonable time thereafter. If the Board of Supervisors fails to cure the defect within a reasonable time, the Consultant may give written notice of termination for cause delivered to the Board of Supervisors with an information copy to the Coordinator.

I. TERMINATION OF CONTRACT FOR CONVENIENCE.

The County may terminate this Contract at any time by giving the Consultant written notice of such termination. Immediately upon receipt of notice of termination, Consultant shall discontinue work on the project and incur no further obligations or expenses. Consultant shall be paid the percentage of the total cost of the HCP that corresponds to the percentage of the HCP document(s) that are satisfactorily completed prior to the Consultant's receipt of said termination.

J. ENTIRE AGREEMENT AND MODIFICATIONS.

(1) This Contract supersedes all previous contracts and constitutes the entire understanding of the parties hereto. Consultant shall be entitled to no other benefits than those specified herein. No changes, amendments, or alterations shall be effective unless in writing and signed by both parties before the change or amendment occurs. Consultant specifically acknowledges that in entering into and executing this Contract, Consultant relies solely upon the provisions contained in this Contract and no others.

(2) Delegation of County Signatory Authority for Minor Modifications. The Board of Supervisors delegates to the Environmental Coordinator the authority to sign amendments to this Contract that make reasonable modifications to the time performance or that increase the scope of work and provide additional compensation. Any amendment beyond that cumulative amount or an amendment pertaining to any performance other than increasing the scope of work, including but not limited to insurance, indemnity, property and other provisions in this Contract must be in writing and signed by the Board of Supervisors. These additional funds are intended to provide for flexibility needed to respond to changes generated in writing by the County; not by the Consultant. The Coordinator will notify Applicant of the Contract modification. Any modification to the Contract within

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the scope of this paragraph need only be signed by the Consultant and the Coordinator; after approval as to form and legal effect by a Deputy County Counsel.

K. APPLICABLE LAW AND VENUE.

This Contract has been executed and delivered in the State of California and covers services to be performed in California. The parties agree that the validity, enforceability, and interpretation of the Contract or any of its provisions shall be determined and governed by the laws of the State of California. All duties and obligations of the parties created hereunder are performable in the County of San Luis Obispo, State of California, and such County shall be the venue for any action or proceeding that may be brought, or arise out of, this Contract.

L. SEPARABILITY.

The invalidity of any provision of this Contract shall not affect the validity or enforceability of any other provision of this Contract.

M. RECORDS.

Pursuant to California Government Code § 10532, every County contract involving the expenditure of more than ten thousand dollars (\$10,000.00) in public funds is subject to examination and audit of the Auditor General for a period of three years after final payment under the Contract. Consultant shall maintain books, records, documents, and other evidence, accounting procedures, and practices, sufficient to reflect properly all direct and indirect costs of whatever nature claimed to have been incurred in the performance of this Contract. The foregoing constitute "records" for the purposes of this paragraph. Consultant shall maintain and preserve, until three years after termination of this Contract, and permit the State of California or any of its duly authorized representatives, including the Comptroller General of the United States, to have access to and to examine and audit any pertinent books, documents, papers, and records of Consultant related to this Contract. Consultant and County shall ensure the confidentiality of any records that are required by law to be so maintained.

N. COST DISCLOSURE - DOCUMENTS AND WRITTEN REPORTS.

Pursuant to Government Code section 7550, if the total cost of this Contract is over five thousand dollars (\$5,000.00), the Consultant shall include in all final documents and in all written reports submitted a written summary of costs, which shall set forth the numbers and dollar amounts of all contracts and subcontracts relating to the preparation of such document or written report. The Contract and subcontract numbers and dollar amounts shall be contained in a separate section of such document or written report.

When multiple documents or written reports are the subject or product of contracts, the disclosure section may also contain a statement indicating that the total Contract amount represents compensation for multiple documents or written reports.

O. NOTICES.

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Any notice required to be given pursuant to the terms and provisions hereof shall be in writing and shall be sent by first class mail to the following address as appropriate:

1. To the Environmental Coordinator;

Environmental Division
Co. Planning & Bldg. Department
976 Osos Street, Room 300
San Luis Obispo, CA 93408

2. To the Board of Supervisors;

Board of Supervisors
County Government Center
1055 Monterey Street D430
San Luis Obispo, California 93408

3. To the Consultant;**P. COPYRIGHT.**

Any reports, maps, documents or other materials produced in whole or part by the Consultant or any subconsultant or person responsible to the Consultant under this Contract shall be the property of the County and none shall be subject to an application for copyright by or on behalf of Consultant, subconsultant or person responsible to Consultant during the performance of this Contract.

Q. CONFIDENTIALITY.

No reports, maps, information, documents, or any other materials given to or prepared by Consultant under this Contract which County requests in writing to be kept confidential, shall be made available to any individual or organization by Consultant without the prior written approval of County. However, Consultant shall be free to disclose such data as is publicly available.

R. EQUIPMENT AND SUPPLIES.

Consultant will provide all necessary equipment and supplies in order to carry out the terms of this Contract.

S. ACCESS TO RECORDS AND FINANCIAL DATA.

All recorded data, preserved in any form, but not limited to materials generated for this project or existing information compiled for this project and any financial documents pertaining to this project are the property of the County. At the request of the Board of Supervisors, the Coordinator, the County Planning Director, the County Counsel, the County Administrator or the County Auditor, the County's agents or employees have a right to access these records wherever located during reasonable hours for up to three years after project approval. After three years, if the Consultant wants to dispose of the background records the Consultant shall give the County the option of taking possession of the records. The County's right to access includes the right to make copies of such information.

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T. PRIORITY OF INCONSISTENT CONTRACT TERMS AND CONDITIONS.

To the extent that any terms or conditions set forth in Exhibit 1, or past business practices between Consultant and County or Coordinator differ from the terms and conditions of this Contract, the terms and conditions expressed in the typed body of this Contract, without reference to Exhibit 1, are controlling.

IN WITNESS THEREOF, County and Consultant have executed this Contract on the day and year first hereinabove set forth.

APPROVED AS TO FORM AND LEGAL EFFECT:

WARREN R. JENSEN
County Counsel

By: _____
Chief Deputy County Counsel

Date: _____

COUNTY OF SAN LUIS OBISPO

By: _____
Chairman of the Board of Supervisors

Approved by the Board of Supervisors this on
_____, 20XX

ATTEST:

Clerk of the Board of Supervisors

CONSULTANT:

_____, a California Corporation

By: _____

Title: _____

Date: _____

By: _____

Title: _____

Date: _____